

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

FIDELITY NATIONAL INSURANCE )  
COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. ) Case No. 4:09CV01136 AGF  
 )  
THE ROBBINS GROUP AND SONS, LLC,) )  
 )  
Defendant. )

**ORDER GRANTING LEAVE TO NAME EXPERT OUT OF TIME**  
**AND AMENDING CASE MANAGEMENT ORDER**

This matter is before the Court on Plaintiff's Motion for Leave to File a Rule 26(a)(2)(A) Disclosure of Expert Witness Out Of Time [Doc. #23], filed on May 28, 2010. The Court directed further briefing by the Plaintiff, required the parties to confer, and requested an expedited response from Defendant. Plaintiff filed its motion seeking leave to disclose an expert approximately 28 days beyond the deadline set forth in the Case Management Order ("CMO"), and states that the failure to name the expert in a timely manner was due to a clerical error.

In its supplemental memorandum [Doc. #26], Plaintiff states that it seeks to name an expert in the business of insurance and insurance underwriting, who will provide an opinion on whether the allegedly inaccurate information that Defendant provided to Plaintiff, which forms the basis of Plaintiff's claims against Defendant, would be deemed "material" to reasonable persons engaged in the insurance industry. Defendant opposes the motion on the ground that the opinions that Plaintiff seeks to elicit are not properly

the subject of expert testimony and invade the province of the jury. Defendant did not otherwise object to the proposed amendment to the deadlines in the CMO proposed by Plaintiff in its supplemental memorandum.

For good cause shown, and because the tardy designation at this time will not unduly prejudice Defendant, the Court will grant Plaintiff's motion, and allow the designation and disclosure of Lewis Crist as an expert witness out of time. The Court is not addressing, at this time, whether Mr. Crist will be permitted to testify regarding the materiality of the alleged inaccurate information. Defendant may file a motion to exclude or limit the testimony or other Daubert motion in a timely manner prior to trial.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's Motion for Leave to File Rule 26(a)(2)(A) Disclosure of Expert Witness Out Of Time [Doc. #23] is **GRANTED**.

**IT IS FURTHER ORDERED** that the Case Management Order is amended as follows:

Plaintiff shall immediately disclose Mr. Crist's expert report and make Mr. Crist available for deposition no later than **June 18, 2010**.

Defendant shall disclose its expert witnesses and provide reports no later than **July 9, 2010**, and shall produce its experts for deposition no later than **August 6, 2010**.

All discovery shall be completed no later than **August 6, 2010**.

Case Dispositive motions shall be filed no later than **August 20, 2010**; opposition briefs shall be filed no later than **September 17, 2010**; and any reply brief shall be filed no later than **September 27, 2010**.

Any motions under Daubert shall be filed no later than **August 20, 2010**.

**IT IS FURTHER ORDERED** that except as modified herein, the CMO and Order Relating to Trial [Doc. #13] shall remain in effect.

  
AUDREY G. FLEISSIG  
UNITED STATES MAGISTRATE JUDGE

Dated this 7th day of June, 2010.